

FILED

UNITED STATES COURT OF APPEALS

FEB 18 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

M. R.; et al.,

Plaintiffs - Appellants,

v.

SUSAN DREYFUS, in her professional
capacity as Secretary of Washington State
Department of Social and Health Services
and WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, a Department of
the State of Washington,

Defendants - Appellees.

No. 11-35026

D.C. No. 2:10-cv-02052-TSZ
Western District of Washington,
Seattle

ORDER

Before: CANBY, LEAVY, and SILVERMAN, Circuit Judges.

This appeal is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply.

The parties' motions to file over-sized papers are granted.

Appellants' motion to file under seal exhibits in support of the motion for emergency relief is granted. *See* 9th Cir. R. 27-13.

When deciding whether to issue a stay, including a stay of a state action that the district court has declined to enjoin, we consider: (1) whether the stay applicant

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has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See California Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 849-850 (9th Cir. 2009). We find that appellants have not met this standard. Accordingly, appellants' emergency motion for a stay pending appeal is denied.

The following briefing schedule shall govern this appeal: the opening brief and excerpts of record are due not later than March 10, 2011; the answering brief is due April 7, 2011 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 14 days after service of the answering brief. *See* 9th Cir. R. 3-3(b).